

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DAVID A. DOWS,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 04-341 ERIE
)	
KATHERINE E. HOLTZINGER CONNER,)	
ESQ., et al.,)	
Defendants)	

HEARING ON DEFENDANTS' MOTION TO DISMISS

Proceedings held before the HONORABLE
SEAN J. McLAUGHLIN, U.S. District Judge,
in Courtroom C, U.S. Courthouse, Erie,
Pennsylvania, on Wednesday, June 29, 2005.

APPEARANCES:

WILLIAM TAGGART, Esquire, appearing on behalf of
the Plaintiff.

LINDA S. LLOYD, Esquire, Senior Deputy Attorney
General, appearing on behalf of the Defendant.

- 1 -

Ronald J. Bench, RMR - Official Court Reporter

P R O C E E D I N G S

(Whereupon, the proceedings began at 1:28 p.m., on Wednesday, June 29, 2005, in Courtroom C.)

THE COURT: All right, this is the time we set for argument on the defendants' motion to partially dismiss the amended complaint. I've had an opportunity to read the briefs, I'm conversant with them, I think. Before we start here, though, by way of maybe clearing out some of the underbrush, Mr. Taggart, let me ask you some questions, if I could, which might go a long way towards streamlining our discussion before we get into the argument. Would you mind coming up to the podium.

MR. TAGGART: Not at all.

THE COURT: Now, the problem, I will say, is probably mine, but I have read the amended complaint a number of times and, quite frankly, in some particulars I've had some difficulty following it. And, thus, my need for some clarification. At paragraph nine of your complaint, you talk about the dismissal without just cause on or about October 10, 2003?

MR. TAGGART: Yes.

THE COURT: And you indicate that discharge was the subject of an EEOC charge, which you say has been partially

1 resolved?

2 MR. TAGGART: Yes, your Honor.

3 THE COURT: What does that mean, I mean was there a
4 distinct and final settlement that grew out of that alleged
5 inappropriate activity?

6 MR. TAGGART: Specifically, here's exactly what
7 happened. I was leery of discussing it in detail because
8 there's a confidentiality agreement about the settlement.

9 THE COURT: You don't have to give me the specifics,
10 but was there a payment and a release releasing the Erie County
11 Office of Children and Youth from any liability arising out of
12 his discharge and the events which were the subject matter of
13 an EEOC charge?

14 MR. TAGGART: Yes.

15 THE COURT: All right. So is it fair to say that
16 that really is just background insofar as this new lawsuit is
17 concerned?

18 MR. TAGGART: Yes.

19 THE COURT: Okay. Now, is this a disparate impact
20 case or is this a disparate treatment case?

21 MR. TAGGART: The maintenance of the list --

22 THE COURT: Because it sure smells like a disparate
23 impact case the way you've pled it -- in this sense --

24 MR. TAGGART: The maintenance of the list --

25 THE COURT: That's disparate impact?

1 MR. TAGGART: Yes.

2 THE COURT: In other words, is the theory -- well,
3 let me see if I got the theory right. And recognizing that
4 Erie County Office of Children and Youth is not a defendant in
5 this case, it's just the Commission?

6 MR. TAGGART: Right.

7 THE COURT: The theory is that the Commission
8 maintains two lists and I'm paraphrasing this, if you will --
9 one are, broadly speaking, are interns, if you will, and the
10 others are non-probationary, permanent employees, merit
11 employees, if you will. The theory is that overwhelmingly the
12 people who make up the non-merit list, if you will, are younger
13 females?

14 MR. TAGGART: Correct.

15 THE COURT: And that presumably the flip side of
16 that is the majority of people who make up the merit list are
17 older males?

18 MR. TAGGART: I'm going to have to be clear. My
19 client filed various information requests outside of the
20 lawsuit, with the Civil Service Commission, and they have not
21 provided that data to him. However, antidotally, if you will,
22 that's our sense of it.

23 THE COURT: Okay. So going forward then in time,
24 the essence, as I understand it, of your claim -- you are
25 seeking damages as a result of the failure of Erie County

1 Office of Children and Youth to have hired, if you will, to
2 have rehired your client between October 10th and May 17th,
3 2004, is that right?

4 MR. TAGGART: Yes, it then generated a number of
5 negative results.

6 THE COURT: Okay. Now, during that, and the theory
7 is, insofar as the Commission was concerned, that it was their
8 custom or practice when it became necessary for county offices,
9 such as this one, to fill a vacancy or vacancies, that rather
10 than peel off first from the merit list, they would peel off
11 first from the intern or non-merit list, is that right?

12 MR. TAGGART: That's our understanding.

13 THE COURT: In other words, the Commission -- a
14 request would be made for a person to fill a vacancy; and is it
15 your theory that it then fell to the Commission, and the
16 Commission only, to determine who would be sent to the County
17 to replace whoever needed to be replaced?

18 MR. TAGGART: If the County had chosen to
19 participate, yes.

20 THE COURT: When you say participate, you mean
21 participate in the Civil Service list?

22 MR. TAGGART: Yes.

23 THE COURT: And this County did?

24 MR. TAGGART: Yes.

25 THE COURT: All right. Now, during this period of

1 time, and I'm running from memory of your complaint, you plead
2 that there were a number of vacancies came up, and there were
3 several people that were placed in positions with the County,
4 if memory serves, all female and all younger, is that right?

5 MR. TAGGART: Yes.

6 THE COURT: And your theory insofar as the manner in
7 which the Commission would send people to fill vacancies with
8 Erie County Office of Children and Youth is it by virtue of the
9 nature of their list, meaning a non-tenured list, younger and
10 female, I'm using the term tenure in a different sense, a merit
11 list, presumably older and male, that the maintenance of that
12 list served to work a disparate impact; is that in part true?

13 MR. TAGGART: Yes.

14 THE COURT: All right. Do you also allege or is it
15 your contention that aside from just a good old disparate
16 impact case -- which really doesn't require under the law evil
17 motive or sex or age driven motive, is it your contention that
18 the Commission in various particulars was also guilty of
19 intentional -- in other words, disparate treatment, as opposed
20 to simply running a list that had a capacity to disparately
21 impact?

22 MR. TAGGART: Yes, that is our contention. That is
23 relegated to the 1983 claim as well in that we believe that
24 given --

25 THE COURT: I'm just on Title VII right now. So

1 it's a disparate impact and disparate treatment case?

2 MR. TAGGART: Correct.

3 THE COURT: So is it your theory that the
4 Commission, through its agents, by the agents I mean the people
5 who would have ultimately been responsible for assigning these
6 Civil Service people, the interns would not have been Civil
7 Service people anyways, would they?

8 MR. TAGGART: That's part of what we would try to
9 understand better in discovery. It's not clear to us why the
10 intern list is maintained at all by the Civil Service
11 Commission.

12 THE COURT: And I'm trying to understand how this
13 works and I presume Ms. Lloyd may be able to educate me on the
14 interaction between these two entities. But at the end of the
15 day, does Erie County have to accept anybody that the
16 Commission sends to them?

17 MR. TAGGART: It's agreed by participation in the
18 Civil Service activity, it has agreed to accept, assuming the
19 individual meets minimal criteria.

20 THE COURT: Right.

21 MR. TAGGART: Which is truly minimal, and then
22 functions effectively. And you may recall that Mr. Dows was
23 parked on the sideline while the County attempted to remove him
24 from the list on the theory that he was not qualified.

25 THE COURT: I completely did not understand that

1 part of your pleading, I have to be honest with you.

2 MR. TAGGART: It reflects on me.

3 THE COURT: Maybe it reflects on me, but here's my
4 point. You say, the thrust of your pleading is that the
5 Commission tried to talk Erie County into taking Mr. Dows off
6 the list; it made no sense to me, how can Erie County influence
7 the Commission -- if the Commission didn't want him anymore,
8 they could have thrown him off itself?

9 MR. TAGGART: Presumably they can act pro se. There
10 is a hearing process because it's considered a vested right,
11 this 14th Amendment aspect. But what happened here is that the
12 County petitioned with the Civil Service Commission to remove
13 Mr. Dows from the list and the Commission has a procedure to
14 handle those situations.

15 THE COURT: And they said ultimately no?

16 MR. TAGGART: And ultimately they said no, but --

17 THE COURT: What harm did that cause?

18 MR. TAGGART: Several things. Number one, we
19 believe that the instigator of doing it was not the County, but
20 a Civil Service Commission employer/employee who is currently
21 unknown to us, thus the John Doe aspect.

22 THE COURT: So, in other words, the theory is they
23 went to the County or some John Doe and for some reason told
24 the County to petition to have him removed from the list, is
25 that right?

1 MR. TAGGART: Yes, our theory is that in effect they
2 said look, if you don't want to deal with this guy, then you
3 have to hire these people, this will tie him up for months,
4 because he's not considered during that period, and during that
5 time you can carry out your hiring, which were these younger
6 and female persons mentioned in --

7 THE COURT: What would be their motivation to do
8 that?

9 MR. TAGGART: To this moment I'm still trying to
10 determine their interest in doing that.

11 THE COURT: Maybe there is some, but what difference
12 would it make to them -- well, first of all, let me ask you
13 this. Under the rules of the Civil Service Commission, and
14 your client was a Civil Service employee, is that right?

15 MR. TAGGART: Correct.

16 THE COURT: Isn't there an internal operating
17 procedure, isn't there a pecking order which delineates the
18 manner or method in which people are taken off the list for
19 placement?

20 MR. TAGGART: As to the merit list, that is the
21 order, during the life of the list, that is the order that
22 people are on it and Mr. Dows --

23 THE COURT: When you say the order, in terms of
24 seniority and --

25 MR. TAGGART: Grade actually.

1 THE COURT: And grades, how they did on the test?

2 MR. TAGGART: Exactly.

3 THE COURT: So you take the top guy first, the next
4 person, the next person next until you -- then the people that
5 they were using to fill these positions that were not part of
6 that graded list but were interns -- is intern the right word,
7 is it a temporary employee?

8 MR. TAGGART: Well, it seems to be --

9 THE COURT: Is it a temporary employee?

10 MR. TAGGART: No, they become, they're hired as
11 permanent full-time, but they're on probationary status in I
12 think their first 90 days or six months, one or the other.

13 THE COURT: Under the rules and regulations of the
14 Commission, and I presume they are entitled to have these two
15 different classes of employees, because they have them -- under
16 what circumstances is the Commission permitted to place an
17 intern in an open position, as opposed to going in the first
18 instance to someone off the permanent list?

19 MR. TAGGART: The Commission has yet to answer that
20 question. The intern list, its very basis for existing, from
21 the Commission's viewpoint, is not clear. We believe that the
22 interest from the recipient County's viewpoint is that they
23 then get additional funding or subsidizing from the
24 Commonwealth if they hire these interns. So I think the County
25 has an economic motive. As to the Commission, the court's

1 probably aware from other cases that there can be certified
2 apprentice programs and you can hire off of those certified
3 programs and be exempt from the concerns that are in this
4 lawsuit.

5 THE COURT: Now, on May 20th, Debra Liebel of the
6 Office of Children and Youth hired him, right?

7 MR. TAGGART: The first time --

8 THE COURT: Well, this is the second time?

9 MR. TAGGART: The second time that was a result of a
10 Commission order. Eventually the Commission ordered that.

11 THE COURT: The Commission is the defendant here,
12 they're ordering him to be hired and you're suing the
13 Commission?

14 MR. TAGGART: This only occurred after this gap that
15 we've been talking about where all these other people came in,
16 established seniority and he was not paid for that full period.

17 THE COURT: Do you admit that at least facially this
18 doesn't make any sense; I mean, absent a motive, you don't have
19 it right now, you pled it, I'm not suggesting that, but what
20 was the impetus that changed the Commission's mind to hire him
21 in May rather than to put roadblocks in his hiring for the
22 previous four months?

23 MR. TAGGART: The Commission, as a result of a
24 hearing that was held in Pittsburgh on all this, concluded that
25 his original hiring had been done improperly, he had been

1 treated as a per diem employee when he should have been brought
2 on as a full-time employee. And to make up for that, they
3 ordered him to be hired. In effect, washing away, from their
4 viewpoint, what had happened before and saying let's start off
5 on the right foot now.

6 THE COURT: Is he still employed?

7 MR. TAGGART: No, as part of the aforementioned
8 settlement, he was required to give up his employment with the
9 County of Erie. However, when an individual is on one of these
10 lists --

11 THE COURT: So he was hired, how long did he work
12 there when he was rehired?

13 MR. TAGGART: Approximately four months.

14 THE COURT: All right. I'm going to ask you to sit
15 down and then I'm going to take up the substance of the motion,
16 then I'll hear from you. All right, Ms. Lloyd. Do you
17 understand this interplay between the Commission and the
18 County?

19 MS. LLOYD: No. I've been --

20 THE COURT: Don't you think you should?

21 MS. LLOYD: I've been attempting to understand that.
22 The Commission is just as confused, which leads to my confusion
23 because that's where my information comes from. They were
24 quite surprised by the lawsuit.

25 THE COURT: Well, I'm sure they were, someone has to

1 understand how this works. And perhaps at some point you can
2 inquire of your client how it works.

3 MS. LLOYD: I have inquired, I have basic
4 understanding of the two lists --

5 THE COURT: Why would they have two lists, do you
6 know?

7 MS. LLOYD: Well, the one list is the merit list
8 with the testing, that kind of thing. The intern list, I'll
9 use the words that Mr. Taggart is using, that is there to
10 provide an opportunity for the younger, out of school intern
11 positions, and he is correct, there is an incentive for the
12 County monetarily. They are not, from my understanding, they
13 are not permanent employees but can be --

14 THE COURT: They can get a cheaper employee?

15 MS. LLOYD: Yes, as probationary employees, they can
16 go from there. It's also my understanding that the counties
17 that participate in getting this from the Commission, they are
18 not obligated to hire off of those lists to fill those
19 positions. What they can do, if they request the list and they
20 fill that position at that time, it must be filled off that
21 list. If they take the list and decide that none of the
22 candidates are suitable for them, they can leave the position
23 open and not fill it. They can't go asking for applications
24 outside.

25 THE COURT: On the merit list, if you will, the

1 regular list, we're only talking about that. People are chosen
2 in order of their merit, is that right?

3 MS. LLOYD: Yes, based on their test scores and that
4 could include Veteran's preference status and all those things
5 that are listed in the statute.

6 THE COURT: Why isn't that other list, the "intern"
7 list, do an end run around the meritocracy of the other list?

8 MS. LLOYD: It was my understanding from the
9 Commission that the individuals on that list did take the Civil
10 Service exam, that was my understanding. And I need to be more
11 clear about that with my client. I'm not sure -- they couldn't
12 really explain to me, they don't see it as an end run around,
13 is what I should say. There are two viable lists for the
14 position and whether they want to make it a permanent,
15 full-time employee they pick off the merit list; and if they
16 want to go with an intern, I think it is a six-month
17 probationary status kind of thing, not permanent, then they go
18 off the other list.

19 THE COURT: Well, probably as this goes on, this
20 will become clearer, I think. But you have filed a partial
21 motion?

22 MS. LLOYD: I filed the motion to try to (a),
23 understand this myself and (b), clean up the claims before we
24 start the discovery process. I agree with Mr. Dows and the
25 Eleventh Amendment claim that yes, he is correct, that

1 individuals who in their official capacities can be held
2 responsible for injunctive relief, that is not what I was
3 trying to argue. I was arguing that in a monetary sense --

4 THE COURT: Isn't it true that when all is said and
5 done, you think the only claim that survives here is the Title
6 VII claim against the Commission?

7 MS. LLOYD: That was my belief after reading the
8 amended complaint. Now that I read the brief in opposition, we
9 now have magically appearing a Fourteenth Amendment procedural
10 substantive due process claim.

11 THE COURT: Assuming that 1983 can't be used as a
12 vehicle to vindicate rights protected solely by Title VII, in
13 other words, the other way to put it is Title VII is
14 preemptive --

15 MS. LLOYD: Correct.

16 THE COURT: Of 1983, which I think is correct. He
17 has now injected into the mix an equal protection claim?

18 MS. LLOYD: Yes.

19 THE COURT: Which arguably could be facially pled,
20 couldn't it?

21 MS. LLOYD: Yes.

22 THE COURT: It would not run afoul of the problem
23 that you were just talking about?

24 MS. LLOYD: Had it been pled in the amended
25 complaint, your Honor, that wouldn't have been made part of my

1 motion to dismiss.

2 THE COURT: So would it be fair to say, then, by
3 your lights, the only thing that should properly be left here
4 when all the smoke is cleared, is a Title VII claim against the
5 Commission; and arguably, a substantive due process equal
6 protection claim, not against individuals in their official
7 capacity, but against individuals in their individual capacity?

8 MS. LLOYD: Well, I still have a problem with that
9 because part of my argument also was who did what. He pleads
10 against Katherine Holtzinger Conner, the Chairman, but he
11 doesn't say how she was involved or how she did it or what her
12 role was, whether she had acknowledge, etc. --

13 THE COURT: Then there's John Doe?

14 MS. LLOYD: Then there's a John Doe, two or three or
15 however many now, they've multiplied. There is still really
16 nothing in the complaint that tells me what that individual or
17 individuals may have done to even try to ascertain who those
18 people might be.

19 THE COURT: Do you view this as a disparate impact
20 case --

21 MS. LLOYD: If I had to guess where he was coming
22 from, which I did because he wasn't clear in the complaint,
23 that was my idea, it was a disparate impact --

24 THE COURT: Which really doesn't require any mens
25 rea?

1 MS. LLOYD: No.

2 THE COURT: Just disparate impact?

3 MS. LLOYD: Correct. In a Title VII case, you're
4 right, your Honor. But I didn't get that from the complaint,
5 either, I was guessing, just as you were, where this was going.
6 My hope was to kind of clean this up and understand before we
7 moved forward.

8 THE COURT: We will. All right, thank you. All
9 right, let's see if we can see what we agree on or disagree on.
10 Let me just ask you some questions, then I'll let you jump in.
11 Do you agree that any of your 1983 claims against the
12 Commission, as an entity of the state, are barred under the
13 Eleventh Amendment?

14 MR. TAGGART: Yes.

15 THE COURT: So those are gone, number one. Do you
16 agree that any of your claims against any of the state
17 officials acting in their official capacities are similarly
18 barred under the Eleventh Amendment, for money damages?

19 MR. TAGGART: As to money damages, yes.

20 THE COURT: Yes, I'm only talking about money
21 damages?

22 MR. TAGGART: And in their official capacity.

23 THE COURT: You also agree that the Commission is
24 immune from suit under the PHRA for money damages, as are the
25 individual defendants in their official capacity for money

1 damages for the same reason, the Eleventh Amendment?

2 MR. TAGGART: Yes.

3 THE COURT: Then that's gone. Do you also agree, by
4 virtue of the Supreme Court decision in Florida Board of
5 Regents, that the ADEA claims against the Commission are barred
6 under the Eleventh Amendment as well -- because there's been no
7 waiver by the state?

8 MR. TAGGART: Is that Kimel v. Florida Board of
9 Regents?

10 THE COURT: Yes.

11 MR. TAGGART: Yes, that's true.

12 THE COURT: So that's gone. Then do you agree that
13 there is no claim under Title VII, you can't bring a claim
14 under Title VII against an individual defendant under Sheridan?

15 MR. TAGGART: That's correct.

16 THE COURT: Then that's gone.

17 MR. TAGGART: Title VII claims against the
18 Commission?

19 THE COURT: Title VII claims against the
20 individuals.

21 THE COURT: It can be against the Commission itself,
22 though?

23 MR. TAGGART: Yes.

24 THE COURT: I take it you agree with the principle
25 that where you have a Title VII claim, you can't transform it

1 into a 1983 claim to accomplish the same purposes as the Title
2 VII claim? I'm not talking about equal protection now, I'm
3 talking about Title VII, you can't say that the constitutional
4 statutory right you're vindicating in a 1983 claim is a Title
5 VII claim?

6 MR. TAGGART: I'll agree.

7 THE COURT: It's preempted, you get everything under
8 Title VII?

9 MR. TAGGART: Well, the whole issue of 1983
10 preemption -- Title VII, everything but its legislative history
11 shows that it should be considered preempted or preemptive of
12 1983 on the same subjects.

13 THE COURT: Right.

14 MR. TAGGART: But the courts in looking at it have
15 always had trouble getting passed that legislative history,
16 didn't seem to want that to happen. But it seemed to want them
17 to co-exist, exist with the other.

18 THE COURT: Whatever the merits of that may be, do
19 you agree that you can't piggyback a Title VII claim on the
20 back of a 1983 claim?

21 MR. TAGGART: I agree that Title VII issues cannot
22 be the basis for the 1983 claim.

23 THE COURT: Then that takes care of that. Now, what
24 you have left then is a Title VII claim against the Commission.
25 And for the first time in your brief you say you are asserting

1 an equal protection claim under 1983 against -- once again,
2 this would have to be -- you're asserting an equal protection
3 claim against the individuals in their individual capacity?

4 MR. TAGGART: Relative to 1983 that would be the
5 case.

6 THE COURT: Tell me what the theory of the equal
7 protection claim is?

8 MR. TAGGART: As to the protection, as opposed to
9 the activities of individuals -- this is the reason the
10 Chairman really should not be let out of the case at this
11 point. What it boils down to is we know somewhat the
12 historical maintenance of these two lists. Although, there are
13 immunities and privileges for people in that position, if the
14 individual is aware of these policies and their
15 classifications, that the effect was to rule out some groups
16 and rule in others and chose to maintain that knowingly.

17 THE COURT: Then you could have the requisite level
18 of personal involvement?

19 MR. TAGGART: Of even the Chairman for a 1983
20 action.

21 THE COURT: Who are these John Does, do you have any
22 idea?

23 MR. TAGGART: We know this much. That there were
24 specific persons at the Civil Service Commission that discussed
25 Mr. Dows' situation with human resources people in the Erie

1 County government. And it is our understanding advised them of
2 the procedures they could use to sideline him so he wouldn't be
3 available, when they were planning to hire this cohort of
4 people and move them in. We don't know who that is.

5 THE COURT: Let me ask you this. At this stage is
6 it your theory primarily, with respect to the Title VII claim,
7 that primarily that the individuals, the John Does, the
8 Commission Chairman, were not personally motivated by gender
9 bias, but simply were passively complicit, if you will, in the
10 administration of a system which had the effect of producing a
11 disproportionate impact in favor of one group, as opposed to
12 the other?

13 MR. TAGGART: That is probably the case potentially
14 for the chair and middle managers. But I'm not ready to give
15 that away as to the individuals involved. Because I want to
16 understand why they chose to give that advice.

17 THE COURT: All right, is there anything else you
18 want to tell me?

19 MR. TAGGART: No, your Honor. If there are any
20 additional questions, I'd be delighted to answer those.

21 THE COURT: I don't have anything else.

22 MR. TAGGART: Thank you.

23 THE COURT: Do you have anything else?

24 MS. LLOYD: No, your Honor.

25 THE COURT: Let's go off the record here.

1 (Discussion held off the record.)

2 THE COURT: Actually, let's go back on the record.

3 MR. TAGGART: An individual who is on one of these
4 merit lists, such as Mr. Dows, can be considered and referred
5 to more than one county. Can change the county indicated with
6 the Commission. And so Mr. Dows would hope to be hired in a
7 caseworker position of the same type, but in an adjoining
8 county, such as Crawford or perhaps Venango County. But we're
9 now subject to this same issue no matter where we go.

10 THE COURT: Isn't the big relief you're asking for,
11 that I enjoin the Commission from maintaining two lists?

12 MR. TAGGART: Or merging them would achieve the same
13 thing. In other words, if they became one unified merit list,
14 as was indicated by Ms. Lloyd, who has obviously done her best
15 to understand this to this point. If, in fact, the younger
16 people take the same test and then it's all worked based on the
17 outcome of the test, that would, obviously, be acceptable and
18 fair. Even if it didn't help us achieve --

19 THE COURT: But you don't think the younger people
20 on the list -- you think on a meritocracy they would still fall
21 below your client and yet they were hired, is that right?

22 MR. TAGGART: Yes.

23 THE COURT: All right. Now, let's go off the
24 record.

25 (Discussion held off the record.)

1 THE COURT: All right, I'm going to get an order on
2 the record.

3 ORDER

4 Presently pending before the court is the motion to
5 partially dismiss the amended complaint. After oral argument
6 there have been various concessions made, as set forth on the
7 record, which I incorporate herein by reference. Which,
8 essentially, reduces this claim now to a Title VII claim
9 against the Commission only.

10 In the plaintiff's brief in opposition, he raises
11 for the first time the fact that it is his intention, it was
12 his attention, rather, to attempt to plead an equal protection
13 claim against the individual defendants in their individual
14 capacity. I'm of the opinion, at least for present purposes,
15 that was inadequately pled. However, given the federal rules
16 of civil procedure's liberality, insofar as amendment is
17 concerned, I am going to grant leave to file an amended
18 complaint which, one, deletes from the complaint all of those
19 causes of action or theories concerning which you previously
20 conceded were non-viable. And, two, pleads with the requisite
21 specificity the nature of your equal protection claim and the
22 individual or individuals you believe are responsible, and the
23 nature of their involvement.

24 And, finally, just let me say for the record,
25 insofar as prospective injunctive relief is concerned -- well,

1 when you are pleading, if it is your intention to seek
2 prospective injunctive relief, you may, of course, and this
3 would come in over no objection it's my understanding from the
4 state, it does not run afoul of the Eleventh Amendment,
5 delineate with some greater specificity exactly the nature of
6 the injunctive relief you are looking for and the entity or
7 entities from whom you are looking for.

8 So for the reasons set forth on the record, the
9 motion to partially dismiss the amended complaint is granted in
10 part and denied in part. And the plaintiff is granted 20 days
11 within which to amend. All right, is there anything unclear
12 about that?

13 MR. TAGGART: No, your Honor, thank you.

14 THE COURT: Anything further from you, Ms. Lloyd?

15 MS. LLOYD: No, your Honor, thank you.

16 THE COURT: Then the next thing we'll be getting,
17 presumably after the complaint we'll be getting an answer, and
18 then we'll get you back up here at some point for a status
19 conference. All right, we're adjourned.

20

21 (Whereupon, at 2:03 p.m., the proceedings were
22 concluded.)

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C E R T I F I C A T E

I, Ronald J. Bench, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

A handwritten signature in dark ink, appearing to read "Ronald J. Bench", is written over a horizontal line.

Ronald J. Bench